



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/163306

PRELIMINARY RECITALS

Pursuant to a petition filed January 16, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on February 19, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether this ALJ has jurisdiction to address this overpayment when another ALJ addressed the overpayment, finding that the petitioner's 2009 appeal of this overpayment was untimely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

||

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Katherine May
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On March 11, 2005 the agency provided the petitioner a notice that they were going to intercept her taxes because she owed a total of \$18,611.00 for claim numbers [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].
3. On March 2, 2009 ALJ Brian Schneider issued a written decision addressing the tax intercept and the fact that the petitioner sought to challenge underlining overpayment. ALJ Schneider found that the petitioner's 2009 appeal of a 2005 overpayment was untimely.
4. On January 20, 2015 the Division of Hearings and Appeals received another request for fair hearing regarding this same tax intercept and overpayment from the petitioner.

DISCUSSION

Claim preclusion (formerly known as res judicata) requires a final judgment on the merits in a prior proceeding. Issue preclusion (formerly known as collateral estoppel) requires that the issue of law or fact to be precluded to have been actually litigated and decided in a prior action. *Northern States Power Co. v. Bugher*, 189 Wis.2d 541, 550-551, 525 N.W.2d 723 (1995). Under claim preclusion, "a final judgment is conclusive in all subsequent actions between the same parties (or their privies) as to all matters which were litigated or which might have been litigated in the former proceedings ... claim preclusion is designed to draw a line between the meritorious claim on the one hand and the vexatious, repetitious and needless claim on the other hand." *Ibid.*, p. 550.

The petitioner had the opportunity to contest the tax intercept in her 2009 appeal. In that decision, ALJ Brian Schneider writes:

Petitioner filed this appeal to contest the county's conclusion that her children were living outside of her home. The problem is petitioner filed this appeal far, far too late after the deadline to appeal. The notices of overpayment were sent in August 2004. Petitioner has continued to receive FS and every month her FS were reduced to cover the overpayment, so that over \$800 of it has been recovered. If petitioner disagreed with the overpayment claim, she should have appealed when the claim was made and when the recoupment started, not four years later.

Furthermore Petitioner testified that she attended a court hearing in 2008 concerning her child support arrearage. She testified that her arrearage was expunged because the court found that her children were living with her. The record was held open so that petitioner could provide a copy of the court order.

The petitioner faxed a copy of a court document on February 24, 2009. The document is a finding and order from Milwaukee County Circuit Court, but it does not expunge and arrearage. The court commissioner's notes state that the petitioner is seeking to have part of her arrearage concerning one of her children expunged. It says that the father agrees that the child lived with petitioner, but he disputes when the arrangement started.

The issues the petitioner raises in this appeal are identical to the issues raised by the petitioner in her 2009 appeal. These matters were already addressed six years ago in a different appeal by another ALJ. I do not have jurisdiction to address these issues. I also note that just as her appeal was untimely in 2009, it is untimely six years later, in 2015.

CONCLUSIONS OF LAW

This ALJ does not have jurisdiction over a matter already decided by another ALJ's written decision on March 8, 2009.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 24th day of February, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 24, 2015.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability